

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

**C.P.(CAA) No.594/KB/2018
Connected with
CA (CAA) No.03/KB/2018**

Coram: Shri Madan B. Gosavi, Member (Judicial)

In the matter of:

An application under Section 230 to 232 of the Companies Act, 2013 and Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

In the matter of:

AERIAL TOWER PRIVATE LIMITED , a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 8/5A Jamir Lane, Near Bharat Seva Ashram, Ballygunge, Ground Floor, Kolkata 700 019 in the state of West Bengal within the aforesaid jurisdiction;

And

In the Matter of:

LINKSTAR HOMES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered at, 9A & 9B Sri Nath Roy Lane, 2nd Floor, Kolkata-700007, within the aforesaid jurisdiction;

And

In the Matter of:

MUCHMORE HIRISE PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered at, 9A & 9B Sri Nath Roy Lane, 2nd Floor, Kolkata-700007 within the aforesaid jurisdiction;

And

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In the Matter of:

OPTIMAX HOMES PRIVATE LIMITED, a Company incorporated under the Companies Act, 1956 and having its registered at, 8/5A Jamir Lane, Ground Floor, Near Bharat Seva Ashram, Ballygunge Kolkata-700019, within the aforesaid jurisdiction;

And

1. Aerial Tower Private Limited – Transferee Company / Applicant
2. Linkstar Homes Private Limited – Transferor Company No.1
3. Muchmore Hirise Private Limited – Transferor Company No.2
4. Optimax Homes Private Limited – Transferor Company No.3

Counsel on Record:

1. Mr. M.R. Goenka, Pr. C.S.
2. Ms Sneha Khaitan, Pr. C.S.

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For the Applicant

Date of pronouncing of the Order: 4th July, 2018

ORDER

Per Shri Madan B. Gosavi, Member (Judicial)

1. The object of this Petition is to obtain sanction of this Tribunal to the Scheme of Amalgamation whereby and where under the entire undertaking of the Transferor Companies, namely, Linkstar Homes Private Limited, Muchmore Hirise Private Limited and Optimax Homes Private Limited together with all the Assets and Liabilities relating thereto are proposed to be transferred to and vested in the Transferee Company, namely, Aerial Tower Private Limited on the terms and conditions fully stated in the Scheme of Amalgamation, a copy whereof is annexed with the Petition and marked as **Annexure-A1**.

2. The Petitioners stated that the proposed re-alignment will create enhanced value for all the stakeholders of the Companies as it would facilitate focused

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strategy, direction and business planning to optimize operational, managerial, financial, technical and marketing capabilities of each business. It will help in optimization of the resources and reduction of the operational costs.

3. It has further been stated that the Transferee Company and the Transferor Companies are engaged in the business of Real Estate - Development and Trading of Land and Building etc.

4. The amalgamation will enable the Transferee Company to consolidate its line of business by restructuring and reorganizing its business activities and capital structure.

5. The Scheme of Amalgamation will enable the Companies concerned to rationalize and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

6. The Board of Directors of the Transferor Companies and the Transferee Company have, at their respective Board Meeting held on 09.10.2017, passed resolution approving the Scheme of Amalgamation.

7. The copy of the resolutions passed by the Board of Directors of the Transferor Companies and the Transferee Company approving the Scheme of Amalgamation are annexed with the Petition and collectively marked as Annexure A-24.

8. The Auditors of the Transferee Company have certified that the Accounting Treatment proposed in terms of clause 8 Part II of the scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013.

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9. The copy of the certificate issued by the Auditors with regard to Accounting Treatment is annexed with the Petition and marked as Annexure A-22.

11. There are 3 (Three) Shareholders in the Transferee Company, 2 (Two) Shareholders in LINKSTAR HOMES PRIVATE LIMITED (LHPL / Transferor Company 1), 2 (Two) Shareholders in MUCHMORE HIRISE PRIVATE LIMITED (MHPL / Transferor Company 2) and 3 (Three) Shareholders in and Optimax Homes Private Limited (OHPL / Transferor Company 3) and all the Shareholders of the Company had consented to the Scheme of Amalgamation by way of affidavit.

12. The copy of the list of shareholders of the Transferee Company and the Transferor Companies are annexed with the petition and marked as Annexure A-25.

13. There are NIL Debenture Holders in the Transferee and all the Transferor Companies as on 09.10.2017.

14. The copy of the list of Debenture Holders of the Transferee Company and Transferor Companies are annexed with the Petition and marked as Annexure A-26.

15. It is further stated that in the Application that the Transferee Company namely, Aerial Tower Private Limited have NIL Secured Creditors and 1 (One) Unsecured Creditor as on 09.10.2017 and the Creditors of the Company had consented to the Scheme of Amalgamation by way of affidavit.

16. The copy of the list of Secured and Unsecured Creditor of the Transferee Company are annexed with the Petition and collectively marked as Annexure A-27.

17. All the Transferor Companies namely LINKSTAR HOMES PRIVATE LIMITED, MUCHMORE HIRISE PRIVATE LIMITED and OPTIMAX HOMES PRIVATE LIMITED have NIL Secured Creditor and NIL Unsecured Creditors as on 09.10.2017.

18. The copy of the list of Secured and Unsecured Creditors of all the Transferor Companies are annexed with the Petition and collectively marked as Annexure A-28, Annexure A-29 and Annexure A-30 respectively.

19. The Auditor Certificate verifying the list of Shareholders, Secured and Unsecured Creditors and the debenture holders of Transferee Company and Transferor Companies are annexed with the Petition and marked as Annexure A-31, Annexure A-32, Annexure A-33 and Annexure A-34 respectively.

20. The Transferee Company and the Transferor Companies had filed an Application bearing CA(CAA)No. 03/KB/2018 before this Tribunal and this Tribunal, by an order made in the said Company Application CA(CAA)No. 03/KB/2018 on 14.02.2018, had dispensed with the meetings of the Equity Shareholders and the Unsecured Creditor of the Transferee Company in view of written consent given in the form of affidavit by the shareholders and all the Unsecured Creditors of the Transferee Company. As there were NIL Secured creditors in the Transferee Company, so the holding of meeting of the Secured Creditor was also dispensed with. Further, as all the Equity Shareholders of the Transferor Companies have given written consent in the form of affidavit and there are NIL Secured and Unsecured Creditors in all the Transferor Companies thus the holding of separate meeting has also been dispensed with.

21. Pursuant to the aforesaid Order dated 14.02.2018 of this Tribunal, service of Notice under Section 230(5) of the Companies Act, 2013 along with the

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explanatory statement under Section 230(3) and the Scheme of Amalgamation was served to the Regional Director, Eastern Region, the Registrar of Companies, West Bengal, the Income tax Authorities, Chief Commissioner of Income Tax, the Official Liquidator attached to High Court, Calcutta by the Petitioners on 20.02.2018.

22. In compliance of the aforesaid order of this Tribunal dated 14.02.2018, an affidavit of service affirmed on 20.02.2018 had been filed by the Petitioners.

23. After such due compliance, the petitioners have made the instant Petition bearing No. C.P (CAA) /KB/2018 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the Scheme.

24. Heard the arguments of the Ld. Counsel for the Petitioner Companies.

25. Let notice be served as per requirements of sub section (5) of section 230 of the Companies act, 2013 along with all the documents including a copy of the scheme of Amalgamation on the Central Government, through the Regional Director, Eastern Region , Ministry of Corporate Affairs, Kolkata, the Registrar of Companies, West Bengal and the concerned Assessing Officer along with the Chief Commissioner of Income tax with PAN numbers of Petitioners Companies, by hand delivery through personal messenger or by speed post, E-mail, both, and also on the Official Liquidator attached to the High Court, Calcutta, having jurisdiction over the Petitioner Companies , within 14 days from this order.

26. The Petitioner Companies shall file an affidavit, along with the copy of the notice 14 days regarding service of notice.

27. The Petitioner Companies shall send notice through e-mail also and file copies of the mails along with an affidavit. The notice shall specify that representation, if any, should be filed before this Tribunal within 30 days of the date of receipt of the notice with a copy of such representation being sent simultaneously to the petitioners and their advocates, if no such representation is received by the Tribunal within the said period, it shall be presumed that such authorities have no representation to make on the Scheme of Amalgamation.

28. Such Notices shall be sent under section 230(5) of the Companies Act, 2013 in Form No. CAA-3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with necessary variations incorporating the directions therein.

29. Let the advertisement of the hearing of this petition be published once in English daily "Financial Express" and in Bengali "Dainik Statesman", of all the Petitioner Companies at least 10 days before the aforesaid date fixed for hearing in Form No. NCLT 3A of the National Company Law Tribunal Rules, 2016 with necessary variations.

The C.P. No.594/KB/2018 connected with CA (CAA) No.03/KB/2018 is fixed for hearing on **August 30, 2018**.

Urgent certified copies of this order, if applied for, be issued to the parties upon compliance with all requisite formalities.


(Madan B. Gosavi)
Member (J)

Signed this day of 4th July 2018.

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